

Jon Givens

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Subject: Attached draft Joint Memorandum



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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

ALASKA RENT-A-CAR, INC.,)	
an Alaska Corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
CENDANT CORPORATION, et al.,)	
)	
Defendants.)	Case No. 3:03-cv-29 [TMB]

JOINT MEMORANDUM PURSUANT TO THE ORDER AT DOCKET 297

The Court, pursuant to the Minute Order From Chambers dated December 18, 2006, Docket 297, directed the parties to file a joint memorandum addressing certain issues.

I. CORPORATE RELATIONSHIPS AND THE IDENTIFICATION OF THE FRANCHISOR/LICENSOR.

A. Corporate Relationships.

Plaintiff, Alaska Rent-A-Car is an Avis Licensee/Franchisee, which is not in the ownership structure of any of the defendant corporations. Attached as Exhibit 1 is an

organizational chart prepared by the plaintiff for the Court's benefit, and attached as Exhibit 2 is an organizational chart prepared by the defendant for the Court's benefit.

B. The Identity of the Franchisor/Licensors.

The parties disagree as to the identity of the franchisor/licensor and therefore each side sets forth its respective position on the identity of the franchisor/licensor.

1. **Plaintiff Alaska Rent-A-Car, Inc. contends the franchisors/licensors are Avis Budget Car Rental/CCRG, Avis Rent a Car System LLC/Inc. and Avis Car Rental Group LLC/Inc.**

Alaska Rent-A-Car contends that the current franchisor/licensor is Avis Budget Car Rental LLC f/k/a Cendant Car Rental Group, LLC f/k/a Cendant Car Rental Group, Inc. (hereinafter "Avis Budget Car Rental/CCRG"). The franchisor/licensor listed in the 1965 Exclusive License Agreements (hereinafter "ELAs") for Alaska Rent-A-Car is Avis, Inc.¹ The 1976 Amendment to the ELAs was executed by Avis, Inc.² Avis, Inc. currently known as Avis Car Rental Group, LLC and formerly known as Avis Car Rental Group, Inc. (hereinafter "Avis Car Rental Group") assigned the role of franchisor to Avis Rent a Car System, Inc. on May 12, 1965.³

In 2003 after the Budget acquisition, Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. were converted into their alter ego Avis Budget Car Rental/CCRG. Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. are both franchisors and licensors of Alaska Rent-A-Car and are still legally obligated with such responsibilities, but all the employees who perform franchisor/licensor functions and responsibilities have been transferred to Avis Budget Car Rental/CCRG, and thus the alter ego Avis Budget Car Rental/CCRG performs all the functions of a franchisor.⁴

¹ See Docket 164, Exhibit 3 at pp. 1-4.

² See Docket 164, Exhibit 4 at p. 10.

³ See Docket 172, Exhibit 11, 1965 Assignment and cover letter thereto.

⁴ See Docket 279 Exhibit 30, October 16, 2006, interrogatory response number 9. See also Docket 279 p. 40, n. 142 and accompanying text.

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Alaska Rent-A-Car contends that its current franchisor/licensor is Avis Budget Car Rental/CCRG, and further Alaska Rent-A-Car contends Avis Rent A Car System, LLC f/k/a Avis Rent A Car System, Inc. and Avis Car Rental Group are also legally obligated as its franchisor/licensor. Alternatively, under the piercing and alter ego allegations, Alaska Rent-A-Car contends all defendants are the franchisor/licensor of Alaska Rent-A-Car, Inc.

Alaska Rent-A-Car has previously set forth evidence and arguments demonstrating its franchisors/licensors include (1) Avis Budget Car Rental/CCRG, (2) Avis Rent A Car System, LLC/Inc., and (3) Avis Car Rental Group. For convenience of the Court, the foregoing arguments and authority are set forth at:

- (1) Docket 163 at p. 45 and n. 283-286 and accompanying text, *see also* Docket 163 at pp. 15-17;
- (2) Docket 277 at pp. 45-46 and n. 190-195 and accompanying text;
- (3) Docket 199 at p. 3 and n. 11-15 and accompanying text;
- (4) Docket 172 at pp. 5-6 and n. 14-20 and accompanying text;
- (5) Docket 164 at p. 11 and n. 56-57 and accompanying text;
- (6) Docket 279 at p. 40 and n. 142 and accompanying text;
- (7) *See also* Exhibit 3, attached to this joint memorandum; interrogatories dated October 9, 2006, interrogatory responses 2 and 4; *see also* interrogatory responses dated October 18, 2006, interrogatory responses 7, 8 and 9⁵; and
- (8) *See also* Docket 183 at pp. 4-5, n. 17-18 and accompanying text.

In short, today plaintiff pays its franchisee fees to Avis Budget Car Rental/CCRG. According to Bob Salerno, president of Avis and Avis Budget Car Rental/CCRG, the franchisor is Avis Budget Car Rental/CCRG. Currently, only Avis Budget Car Rental/CCRG employees provide franchisor services. Neither Avis Car Rental Group nor Avis Rent A Car System LLC have employees who provide franchise services.

⁵ The foregoing interrogatories indicate all franchisor/licensor services are currently provided by Avis Budget Car Rental/CCRG and that no such services are presently provided by Avis Rent A Car System, Inc. or Avis Car Rental Group, Inc. employees.

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At the time of the July 30, 1997 Separation Agreement, defendants executed the Master License Agreement and provided Avis Rent A Car System, Inc. would function as the franchisor. Avis Rent A Car System, Inc. employees provided franchisor services until the Budget acquisition when they were converted into Avis Budget Car Rental/CCRG employees.

2. Defendants Contend that Avis Car Rental Group, LLC is the Sole Licensor, and Has Been the Sole Licensor, Since July 30, 1997

Avis Car Rental Group, LLC, known as Avis Car Rental Group, Inc. at the time the First Amended Complaint was filed ("ACRG")⁶, is the sole Licensor and has been the sole Licensor since July 30, 1997, when Alaska Rent-A-Car, Inc.'s License Agreements were assigned to it. At any point in time, there has only been one licensor. Prior to July 30, 1997, the licensor was Avis, Inc. from February 1, 1965 to May 11, 1965 and, following an assignment of the License Agreements, the licensor was Avis Rent A Car System, Inc. from May 12, 1965 through July 29, 1997. A more detailed explanation follows below:

On February 1, 1965, Alaska Rent-A-Car, Inc. ("RAC") entered a series of License Agreements with Avis, Inc. *See* Docket No. 181, Exh. 15, pp. 1-10 (A 0027-A 0036). Paragraph 11 of each of the February 1, 1965 License Agreements, titled "Assignment," states that "[t]his Agreement and all rights hereunder may be assigned or transferred by Licensor, and shall inure to the benefit of the Licensor's successors and assigns." Docket No. 181, Exh. 15, p.9 (A 0035). On June 4, 1965, a letter was sent to Avis licensees, including Alaska Rent-A-Car, Inc., providing notice that "Avis, Inc. has assigned all Avis License Agreements to Avis Rent-A-Car System, Inc." ("ARACS"), enclosing a copy of the Assignment of the License Agreements, and indicating that the "Assignment simply changes the Licensor from Avis, Inc. to Avis Rent-A-Car System, Inc." *See* Docket No.

⁶ For the sake of clarity, Defendants in this section refer to corporate entities by their full names, rather than by acronyms. However, Defendants have indicated acronyms after the first reference to each entity to assist with review and cross-referencing to the parties' briefs.

46A, Exh. 6 (A 45727). The Assignment, which was dated May 12, 1965, specifically indicated that Alaska Rent-A-Car, Inc.'s License Agreements had been assigned to Avis Rent A Car System, Inc. *See* Docket No. 181, Exh. 15, p. 11 (A 0037).

On January 15, 1976, Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. entered into a settlement agreement (the "1976 Settlement Agreement"). *See* Docket No. 181, Exh. 15, pp. 12-18 (A 0038-A 0044). The 1976 Settlement Agreement identifies Avis Rent A Car System, Inc. as the "Licensor," indicates that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. are the parties to the February 1, 1965 License Agreements, states that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. were parties to certain litigation involving the February 1, 1965 License Agreements, and provides that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. would execute on the closing date an amendment to the License Agreements in the form of Exhibit A. *See* Docket No. 181, Exh. 15, p. 12 (A 0038). While Exhibit A, which was executed on the same date as the Settlement Agreement, listed the executing parties as Alaska Rent-A-Car, Inc. and Avis, Inc. (*see* Docket No. 181, Exh. 15, pp. 19-21 (A 0045 – A 0047)), the reference to Avis, Inc. was an apparent typographical error, as is clear from the context of the 1976 Settlement Agreement and its provision that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. would execute an amendment in the form of Exhibit A. Thus, as of January 15, 1976, Avis Rent A Car System, Inc. was still the Licensor.⁷

On July 30, 1997, a Separation Agreement was entered into between Avis Car Rental Group, LLC (which was known as HFS Car Rental, Inc. at that time), and Avis Rent A Car, Inc., which was the parent of Avis Rent A Car System, Inc. *See* Docket No. 46A, Exh. 11 (A 44364-A 44404). Pursuant to the Separation Agreement, Avis Rent A Car, Inc., on behalf of itself and its subsidiaries including Avis Rent A Car System, Inc.,

⁷ Plaintiff Alaska Rent-A-Car, Inc. appears to contend that the 1976 Settlement Agreement was entered by Alaska Rent-A-Car, Inc. with both Avis Rent A Car System, Inc. and Avis, Inc. While Defendants disagree with this contention, it is irrelevant because, following the assignments on July 30, 1997, discussed in the succeeding paragraph, the entity currently known as Avis Car Rental Group, LLC became the sole Licensor.

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transferred certain assets to the entity currently known as Avis Car Rental Group, LLC.⁸ Among the assets transferred to Avis Car Rental Group, LLC were the Avis License Agreements (referred to therein as Franchise Agreements), including Alaska Rent-A-Car, Inc.'s License Agreements. Docket 46A, Exhibit 11, pp. 6, 25-33 (A 44369, A 44388-A 44396). Subsequent to the assignment of Alaska Rent-A-Car, Inc.'s License Agreements on July 30, 1997 to the entity currently known as Avis Car Rental Group, LLC, there have been no subsequent assignments of Alaska Rent-A-Car, Inc.'s License Agreements. Thus, from July 30, 1997 up to the present, the entity currently known as Avis Car Rental Group, LLC has been the sole Licensor.

II. STATUS REPORT ON DOCKET 178.

The Court has asked whether the motion at Docket 178 is moot. Docket 178 at pages 1-3 seeks "I. Declaratory and Injunctive Relief is Appropriate to Ensure the Car Rental Business Retains its \$802,000,000." Since This portion of the motion at Docket 178 is moot.

Docket 178 pages 4-6 contains the portion of the motion addressing "II. Permanent Injunctive Relief Should be Granted and Joining Defendants From Associating Avis and Budget in their Corporate Names and Otherwise." Plaintiff contends this portion of Docket 178 is not moot as plaintiff continues to request the Court to grant permanent injunctive relief preventing the names Avis and Budget from being associated (now or in the future) and further to prevent the joint marketing (now or in the future) of Avis and Budget. Defendants contend that this portion of Docket 178, to the extent it seeks to preclude Defendants from using the names Avis and Budget together in a corporate name, or otherwise in proximity to each other, is also moot because the name changes have already occurred. Defendants continue to maintain that Plaintiff's request for injunctive relief should be denied, to the extent such request is not moot.

⁸ Docket 46A, Exhibit 11, p. 7 (A 44370) ("[A]s of the Separation Date, each party hereto shall be deemed to have acquired complete and sole beneficial ownership over all of the

DATED this ____ day of January, 2007.

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DATED this ____ day of January, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on _____ a copy of foregoing Joint Memorandum Pursuant
To the Order at Docket 297 was served electronically on Diane F. Vallentine and John F. Dienelt and on

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by regular U.S. Mail

s/Jon T. Givens

assets, together with all of the rights, powers and privileges incidental thereto, that such
party is entitled to acquire pursuant to the terms of this Agreement.”).

Joint Memorandum Pursuant to the Order at Docket 297
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